

STATE OF SOUTH DAKOTA)
)ss
PENNINGTON COUNTY) IN CIRCUIT COURT
 SEVENTH JUDICIAL CIRCUIT

LEROY DENEKE,

51Civ21-____

Plaintiff,

vs.

Complaint

MENARD, INC.,

Defendant.

LeRoy Deneke, Plaintiff, by and through his undersigned counsel, Michael M. Hickey of Bangs, McCullen, Butler, Foye & Simmons, L.L.P., and John Stanton Dorsey of Whiting, Hagg, Hagg, Dorsey & Hagg, LLP for his cause of action against Defendant, Menard, Inc., states and alleges as follows:

1. Plaintiff is a resident of Pennington County, South Dakota.
2. Defendant Menard, Inc. ("Menards") is a Wisconsin Corporation and operates a place of business in Rapid City, South Dakota.
3. On or about September 27, 2018, Plaintiff, was a customer and business invitee of Defendant and purchased a load of concrete capstones.
4. That after making the purchase he was directed to proceed to a outside yard where the capstones would be loaded into his pickup.
5. After waiting for several minutes, Plaintiff located a forklift operator to load the capstones into his pick-up.
6. A forklift is a powered industrial truck and is governed by ODHA regulations, 29CRF Section 1919.178 which provides safety requirements

relating to the use of fork trucks, tractors and platform lift trucks. Persons who operate forklifts must be trained and certified in their operation.

7. No other employees of Menard were available to assist with the loading, or if they were available, the forklift operator chose not to utilize them.

8. Due to a lack of store personnel available to assist in the loading of Plaintiff's pickup, Plaintiff was required to assist the forklift operator in loading his pickup.

9. While focusing on the loading process, Plaintiff stepped back and tripped over a pallet laying on the ground behind him causing him to fall backwards, striking his head.

10. At all times material hereto, the Plaintiff was a business invitee upon the premises of the Defendant and was owed a duty of exercising reasonable or ordinary care for the Plaintiff's safety.

11. Defendant owed a duty to Plaintiff to furnish a trained forklift operator and other sufficiently trained employees to provide a safe environment for customers to pick up merchandise at their store.

12. As the owner of the property, Defendant knew or should have known of the dangerous condition created in its store and was legally obligated to take reasonable care for the protection of the Plaintiff, which the Defendant failed to do so.

13. Defendant was negligent in the operation of the forklift and the loading of the capstones.

14. Defendant was negligent in failing to provide a reasonable number of trained employees for the loading of the capstones.

15. Defendant failed to warn of the dangers encountered on the premises.

16. As a proximate and legal result of Defendant's negligence, the Plaintiff has been damaged and injured, and has suffered permanent, severe, and disabling injuries, mental and emotional distress, bodily pain and discomfort, loss of enjoyment of life, and past and future medical expenses.

17. As a further proximate and legal result of Defendant's negligence, Plaintiff has incurred reasonable and necessary medical expenses in the approximate amount of One Hundred Eighty-Eight Thousand, One Hundred Twenty-Eight and 19/100 Dollars (\$188,128.19), or such other sum as will be determined by the evidence at the time of trial.

WHEREFORE, Plaintiff prays for judgment as follows:

- A. For damages in an amount to be determined at trial;
- B. For Plaintiff's medical expenses, and other special damages with interest thereon;
- C. For costs and disbursements incurred herein; and
- D. For such other and further relief as the Court deems just and equitable under the circumstances.

PLAINTIFF DEMANDS TRIAL BY JURY

Dated this 21st day of September 2021.

BANGS, McCULLEN, BUTLER,
FOYE & SIMMONS, L.L.P.

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